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8 Attorneys for Plaintiff  
9 ConsumerTrack, Inc.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 CONSUMERTRACK, INC., a  
15 California corporation,  
16  
17 Plaintiff,

18 v.

19 ADVERTISING DIRECT, LLC d/b/a  
20 BLUE C ADS, a Florida limited liability  
21 company, and DOES 1-10,  
22  
23 Defendants.

Case No. 2:17-cv-02404 PA(FFMx)

**PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES AND COSTS**

Date: October 23, 2017  
Time: 1:30 p.m.  
Courtroom: 9A

24 **I. RELIEF REQUESTED**

25 ConsumerTrack, Inc. ("Plaintiff"), respectfully requests the Court to find  
26 that it is entitled to attorneys' fees in the amount of \$60,418.10 and costs in the  
27 amount of \$1,782.46 as authorized by the fee shifting provisions of the Insertion  
28 Orders entered into between Plaintiff and each of the Defendants Blue C Ads and  
Ad Partners ("Defendants").

## II. EVIDENCE RELIED UPON

Plaintiff relies upon the September 21, 2017 Declaration of Nathan Durrance in Support of Motion for Attorney Fees and Costs, the pleadings, and all other documents filed in this case.

## III. ARGUMENT AND AUTHORITY

### A. Plaintiff is entitled to fees and costs in this matter pursuant to the Insertion Orders.

Plaintiff entered into Insertion Order contracts with Defendants Blue C Ads and Ad Partners (“Defendants”). Plaintiff sued both Defendants in this action for breach of the Insertion Orders and received default judgments against both Defendants. [Dkt 44]. One provision of the Insertion Orders entitled Plaintiff to its attorneys’ fees and costs regarding failure of the Defendants to honor their obligations under the Insertion Orders. Section 6 of both Insertion Orders provide (see Exs. A and B to the Durrance Decl.):

*Media Provider [Defendants] hereby agrees to indemnify and hold harmless the Company [Plaintiff] against any and all justifiable liability, claims, suits, losses, costs and legal fees caused by, arising out of, or otherwise resulting from any act, whether intentional or negligent, or omission of the Media Provider [Defendants], in the performance and/or failure to perform the obligations and honor the representations and warranties hereby agreed to pursuant to this Agreement...*

Plaintiff has been forced into court to enforce his rights under the Insertion Orders because Defendants failed to honor their indemnification obligations under the Insertion Orders. [Dkt. 44 para. 2; Dkt. 17 (Second Amended Complaint)].

1 The Court granted default judgment against Defendants for this breach and  
2 awarded costs. [Dkt. 44]. Now this Court should grant Plaintiff its fees and costs  
3 in this matter based on the language of the Insertion Orders.

4 **B. Plaintiff requested fees are reasonable.**

5 **1. The lodestar calculation.**

6 In determining an award of reasonable attorney's fees, courts generally apply  
7 the lodestar method. *Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1078 (C.D.  
8 Cal.). The lodestar fee is calculated by multiplying a reasonable hourly rate by the  
9 number of hours reasonably expended in the litigation. *Id.* There is a strong  
10 presumption that the lodestar represents a reasonable fee. *Id.*

11 **a. The hourly rates are reasonable.**

12 Where the attorneys in question have an established billing rate for billing  
13 clients, that rate will likely be a reasonable rate. The court, however, may adjust  
14 the rate based on the level of skill required by the litigation, time limitations  
15 imposed on the litigation, the amount of the potential recovery, the attorney's  
16 reputation, and the undesirability of the case.

17 Plaintiff's counsel has included several attorneys from Newman Du Wors  
18 (Declaration of Nathan Durrance (Durrance Decl.)). The principal attorney is Mr.  
19 Nathan Durrance, a 2003 graduate of Boalt Hall School of Law, University of  
20 California at Berkeley. Mr. Durrance supervised and assisted all attorneys' work  
21 and reviewed and edited all filings. Mr. Durrance's practice focuses on commercial  
22 litigation and has successfully litigated numerous cases. The hourly rate charged  
23 by Mr. Durrance is \$395. Based on his personal experience charging hourly fees to  
24 clients for over a decade and on his knowledge of the fees charged by a variety of  
25 lawyers in Washington and California, he knows that \$395 is a reasonably hourly  
26 rate.

27 Mr. Jake Bernstein and Mr. John Du Wors assisted Mr. Durrance in  
28 litigating this case, including dealing with XMission and the allegations of

1 violations by Ad Partners and Blue C Ads that precipitated this action for  
2 indemnity against Defendants. Mr. Bernstein is an associate at the firm and has  
3 over 10 years of litigation practice, and his billing rate is \$315 per hour, which is  
4 reasonable given his level of experience and skill. Since graduating from Seattle  
5 School of Law in 2003, Mr. Du Wors is a partner at the firm and has litigated  
6 hundreds of cases in state and federal courts across the country. His billing rate is  
7 \$450, which is reasonable within the Seattle legal market given his level of  
8 experience and skill.

9 Similarly, the rate for the paralegal requested in this motion reflect a  
10 reasonable rate of \$175 based on the levels of experience and qualifications.

11 b. The hours expended are reasonable.

12 Under the lodestar method, the court must determine that counsel expended  
13 a reasonable number of hours in securing a successful recovery. The party seeking  
14 fees must provide documentation of the hours worked. Such documentation need  
15 not be exhaustive or in minute detail, but must inform the court, in addition to the  
16 number of hours worked, of the type of work performed, and the category of  
17 attorney who performed the work.

18 As demonstrated by the detailed billing records attached to the Durrance  
19 Declaration in support of the instant motion, time was not wasted in this case.  
20 Durrance Decl. Ex. C. All hours expended in this case were reasonable and  
21 appropriate given the nature of this case, including the hours spent dealing with the  
22 allegations against Plaintiff and Defendants brought by XMission, which  
23 precipitated this action for indemnity against Defendants.

24 **2. Costs are recoverable.**

25 As the prevailing party, Plaintiff is entitled to recover the costs of the suit,  
26 which Plaintiff was awarded in the default judgment. (Dkt. 44). Plaintiff' costs  
27 total \$1,782.46. Durrance Decl. Ex. C.

1                                   **IV.       CONCLUSION**

2           Plaintiff respectfully requests the Court enforce the Agreement and find that  
3 it reasonably incurred costs and fees of \$62,200.56 in bringing this action and  
4 defending against the allegations brought by XMission against Plaintiff and  
5 Defendants pursuant to the indemnity provisions of the Insertion Orders between  
6 Plaintiff and Defendants.

7  
8 Dated: September 21, 2017

NEWMAN DU WORS LLP

9  
10                                   /s Nathan Durrance

Nathan Durrance, State Bar No. 229210

11                                   nate@newmanlaw.com

12                                   Attorneys for Plaintiff

13                                   ConsumerTrack, Inc.  
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